93-157

NO. _____

Supreme Court, U.S.
FILED
JUN 1 1993
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

DAVID A CLEARY, PETITIONER

VS

STATE OF CONNECTICUT

PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF CONNECTICUT APPELLATE COURT

PRO SE DEFENDANT

DAVID A CLEARY
17 PARK STREET
NEW LONDON, CT 06320
(203) 444-1823

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77 pp

QUESTIONS PRESENTED

Should the Petitioner have been arrested or the Witness? Did the State of Connecticut cause the delay in violation of the Sixth Amendment to the United States Constitution? Does a postmark govern as to Date of Filing? Should Appendix D-2 and D-5 have been allowed into evidence? Did Witness answer the Petitioner's question or did the Judge? Was Petitioner confronted with witnesses against him in violation of the Sixth Amendment to the United States Constitution.?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

DAVID A. CLEARY

VS

STATE OF CONNECTICUT

PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF CONNECTICUT APPELLATE COURT

The Petitioner, David A. Cleary, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Connecticut which agreed with the Appellate Court Notice of Dismissal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI to the United States Constitution is set forth in Appendix Q.

STATEMENT OF THE CASE

On July 22, 1992 Petitioner was arrested for first degree criminal trespass and

ordered to appear in court on August 5, 1992. (Appendix A) Petitioner did so and entered a plea of not guilty.

Original trial date was scheduled for 11 A.M. on September 23, 1992 then shifted to 2 P.M. on the same date. However, Judge Purtill's appearance was required in Juvenile Court at that time so therefore a new trial date was scheduled for October 7, 1992.

Two days later, September 25, 1992, Petitioner visited the Trial Court and requested a written record of the new trial date. In compliance with this request the Deputy Clerk erroneously stated on the record that "the defendant was not sitting in the right court when the case was called". (Appendix B) In order to clear the record of this misstatement the Petitioner personally visited the Clerk Supervisor, William J. Novi, at the 70 Huntington Street Court House in New London,

Connecticut and, after expressing perplexity and concern over this erroneous entry, asked him to please correct it. He responded that he was especially busy at this time and told the Petitioner to come back in a week. Upon this follow up meeting the Petitioner was informed by Mr. Novi that the Deputy Clerk stated that someone in the Prosecutor's Office told her that the Petitioner was absent from the Court Room and that was the reason for the postponement of the trial. She does not remember who the representative of the Prosecutor's Office was who conveyed this reason.

The trial began on October 7, 1992. Only one witness, Dino Michals, testifies and when asked by the Pro Se Defendant during re cross examination: "Are you aware that Ocean Avenue is a Right of Way? Are you aware Ocean Avenue completely, all the way to Long Island Sound, is a Right of Way"? Prosecutor objects. The Court: "No, he

can answer that question. Do you know whether it is or not, sir" All you have to do is answer that question yes or no". He answers, "All I know is Ocean Avenue is paved, that's all I'm saying". The Court answers for Mr. Michals: "All right. It's a Right of Way. Go ahead, Mr. Cleary". Q: "Your Honor, is he aware that Ocean Avenue goes completely into Long Island Sound, is a complete Right of Way"? The Court: "He answered that question". (Pages 30 and 31, Appendix C-1 and C-2)

During the testimony of the arresting officer the Judge is informed by the Clerk that the Defendant has an Order of Disclosure pending. The Judge halts the proceedings and orders the Prosecutor, Steven Carney, to obtain from the Police the requested file and give it to the Defendant, which he does. (Appendix C-3, page 40). However, it does not contain the original Incident Report and thus the Defendant was

unable to obtain for Subpoena purposes who specifically was the witness that was identified on the Docketing as "the tall teenage man".

The trial resumed on October 21, 1992. No witnesses were present. Of the two Police Officers involved only the Arresting Officer was present; not the one who obtained the witness's signature on the Incident Report.

Judge Teller refuses into evidence a memo, dated June 23, 1992, because: "The State is not claiming you trespassed on a sidewalk. They are claiming you trespassed on a beach". Mr. Cleary responds "and I previously showed you the document that states the beach goes right into Long Island Sound". (Appendix D-1, page 18)

The above mentioned Memo is an Interdepartmental Memorandum from the City Engineer to Captain Dittman, New London Police Department which officially notifies

the Police that Ocean Avenue "terminates at the high water line of Long Island Sound", (Appendix D-2) The Arresting Officer was asked of this June 23, 1992 Memo: "or did you know anything about it or discuss anything with the Police while you were employed there"? His answer was "No, I did not". (Appendix D-3, page 17) Also refused into evidence, page 23, Appendix D-4 is a Memo from the Police Chief to the City Manager dated July 22, 1992. (Appendix D-5) because it refers to a previous arrest. However, it also refers to the High Water Mark as did City Engineer's Memorandum. This Memo was written on the day of Petitioner's arrest. It states, "it is fenced off and marked as Private Property with a warning that Trespassers will be prosecuted". It also states thus, "the sidewalk is City Property and Neptune Park Association has been illegally, or at least, improperly posted". Both Memos state the

road (called 'a street' in one and Ocean Avenue in the other) "terminates at the High Water Mark of Long Island Sound". The reference to the previous arrest made this document inadmissable as evidence.

Namely, "this led to an inappropriate arrest of Mr. Cleary". Defendant asked the Arresting Officer, "Did any one in the Police Department tell you that he made an inappropriate arrest of me"? He responded, "No"... (Appendix D-4, page 23) However, later on in his testimony the Arresting Officer does recall that around August 5, 1992 that although he has not read it: "But I've heard from before".

The Defendant then asks, "that's the first time? Is that the first time that you had been told 'don't make an arrest in that area'?" The Officer's responses: "I can't tell you off-hand, I might... Next question by the Defendant: "It's right around that time I guess"? Officer

responds..."Probably, yes". (Appendix D-6, page 27) That is two weeks after the Petitioner was arrested that the Arresting Officer was informed of a problem area. So he says.

A Judgment of Conviction was issued against the Defendant (Appendix D-7) and was fined Seventy-Five Dollars ($75.00). Defendant chose to appeal and was instructed that he had twenty (20) days to do so.

On November 3, 1992 Petitioner orders Transcripts (Appendix E) not knowing he had not done so on October 21, 1992 when he Appealed.

On December 22, 1992: Petitioner again sought a Defendant's Request for Disclosure, this time from Appellate Court (Appendix G). They stamped and returned it with the directive that it belongs in Trial Court. So, New London stamped it on December 24, 1992 and a date was set for a hearing with Judge Teller. Petitioner was informed that

his motion was denied and, after explaining he did not understand the reasoning, respectfully asked that the decision be put in writing. "Get it from the Monitor" was the Judge's response. Petitioner decided not to do so.

On December 29, 1992: Petitioner receives Transcripts. (Appendix H) Eight days later Petitioner directed by Appellate Court to appear in court on January 7, 1993 (Appendix F) to present reasons why he failed to meet the filing date deadline of November 6, 1992, a date formulated as being twenty (20) days after conviction.

On January 20, 1993: Petitioner mailed Appeal (Appendix I) to Appellate Court, 231 Capitol Avenue, Hartford, Connecticut, fro New London, Connecticut. On January 21, 1993, Petitioner had Sheriff deliver documents to the two witnesses of record (Appendix J) and docketing deliveries were completed.

BEST AVAILABLE COPY

January 22, 1993: Appellate Court of Connecticut dismissed Appeal (Appendix K).

January 26, 1993: Appellate Court of Connecticut received the Appeal from New London, Connecticut (Appendix L).

February 10, 1993: Petitioner appealed for Certification by Supreme Court of Connecticut (Appendix M).

March 11, 1993: Petitioner was denied (Appendix N).

March 23, 1993: Petitioner mailed a letter to the United States District Court, 450 Main Street, Hartford, Connecticut 06103. The envelope is Appendix O).

March 24, 1993: Pro Se Clerk, Soo K. Kim, at United States District Court answers letter in one day (Appendix P).

REASONS FOR GRANTING WRIT

Certiorari should be granted for six reasons:

1. Petitioner would not have been arrested in the first place had the Arresting Officer and the Sergeant, who had two witnesses sign the Incident Report, read the two Memos (Appendix D-2 and D-5) that were not allowed into evidence. The ignorance of the Judge is equal to that of the Police. On Page 18, October 21, 1992 trial (Appendix D-1) the Judge says: "They are claiming you trespassed on the beach". That is what the Petitioner calls the area above the High Water Mark although the word beach does not appear in either Memo. Since it took until August 5, 1992 (Appendix D-6) for the Arresting Officer to find out he is "not to make arrests for trespassing along the subject sidewalk" it would be interesting to know when the Sergeant did.

2. Petitioner claims the delay in this

case is due to the State of Connecticut and not himself, thereby violating his Sixth Amendment rights under the United States Constitution. (Appendix Q) On September 23, 1992, Petitioner was scheduled for trial but was told Judge Purtill had to be in Juvenile Court that afternoon and there were only two cases on the Docket that would be affected by his absence. However, to blame the Petitioner (Appendix B) for not sitting in the right court room for this delay is criminal. Worse yet, Chief Clerk William J. Novi did nothing to correct this matter when asked to do so. On October 7, 1992, the rescheduled trial is stopped when a Court Clerk discovers a Defendant's Order of Disclosure Pending and the Judge orders the requested file be given to the Defendant. (Appendix C-1) This creates another two weeks delay. On December 29, 1992 Petitioner receives transcripts fifty six (56) days after they were requested and

eight (8) days late. Appendix H). On January 7, 1993 Petitioner went to the Appellate Court (Appendix F) and they had November 6, 1992 as being twenty (20) days after October 21, 1992. That is four (4) days off. If Petitioner is kept busy the Neptune Beach Park Association will have their City owned land private for themselves again this summer. This was not a speedy trial and neither will the next one.

3. The Postmark on the receipts of Certified Mail of January 20, 1993 (Appendix I) should govern as to the date of filing as it does with the United States Supreme Court - Rule 29.2. However, the two January 26, 1993 deliveries to the Connecticut Appellate Court in Hartford, Connecticut did. It took six (6 days to get there from New London, Connecticut (Appendix L) and the Petitioner was dismissed on January 22, 1993. (Appendix K) An envelope (Appendix O) was mailed from New London, Connecticut to the

United States District Court in Hartford, Connecticut on March 23, 1993. On March 24, 1993 Pro Se Clerk, Soo K. Kim, answered Petitioner (Appendix P) in one day. Certiorari should be granted for this reason alone. Further proof of timeliness is the Sheriff's receipt on January 21, 1993 (Appendix J) to the two witnesses of record. Petitioner went to Norwich, Connecticut Court House and hand delivered Appeal documents to Prosecutor Steven J. Carney on January 21, 1993 and the last of the Connecticut Docketing rules were satisfied.

4. During Petitioner's October 21, 1992 trial the Judge refused into evidence (Appendix D-1 and D-3) a Memorandum from the City Engineer to Captain William Dittman (Appendix D-2) dated June 23, 1992 because it was irrelevant because it did not relate to the Beach. Who should know better where New London, Connecticut property lines are

to be found than he, Mr. James R. McDermott? The Judge also refuses into evidence a Memo from the Police Chief to the City Manager (Appendix D-4) dated July 22, 1992 (Appendix D-5) the day of the Petitioner's arrest. But this also was irrelevant because it pertained to a previous arrest. It is the claim of the Petitioner that both these documents refer to the high water mark and that is beach. It is also the claim of the Petitioner that the Police Chief is part of the agency involved in the arrest and his Memo of July 22, 1992 should have been admitted as evidence. This Memo (Appendix D-5) indicates someone else should have been arrested when he wrote, "Thus the sidewalk is City Property and Neptune Park Association has been illegally, or at least improperly, posting it. This led to an inappropriate arrest of Mr. Cleary".

5. Witness Dino Michals did not answer

Petitioner's most relevant question. The Judge did it for him. (Appendix C-1 and C-2) Even after ordering him to "answer yes or no" the witness answered: "All I know is Ocean Avenue is paved, that's all I'm saying". The Judge replied, "All right! It's a right-of-way...go ahead, Mr. Cleary". On Page 31, October 21, 1992 trial (Appendix C-2) the Judge states: "He answered that question". It is the claim of the Petitioner that the witness did not answer the question because if he had he would be subject to arrest with either a yes or a no answer, bearing in mind the Police Chief's Memo (Appendix D-5) if illegally posted and the street ends at the high water mark. This becomes apparent during direct examination by the Prosecutor of Dino Michals (Appendix C-4) that Ocean Avenue is considered Neptune Beach and redirect examination by the Prosecutor of the entire Page 26, (Appendix C-5) but Mr. Michals

specifically answers, "Neptune Park side, he's coming down---see, to me, that's Neptune Park--posted and everything".

6. Petitioner tried on many occasions to find out who originally had him arrested, namely "the tall, thin teen-aged man", listed in Docketing. Here are three: (1) On October 21, 1992 trial (Appendix C-3) Petitioner got an order to see the file. However, there was no original Police Incident Report that named this individual. (2) Petitioner tried again on December 22, 1992 in Trial Court. All to no avail. It is the claim of the Petitioner that reasonable effort was made to find the other witness or at least be confronted with the one of record thereby violating Petitioner's Sixth Amendment right under the United States Constitution. (Appendix Q).

CONCLUSION

For the reasons set forth above, a Writ

of Certiorari should be issued to review the judgment and opinion of the Connecticut Supreme Court in this matter.

Dated May 26, 1993

Respectfully submitted,

/s/ David A. Cleary

David A. Cleary

Pro Se Petitioner

SUPERIOR COURT

TO: ANY PROPER OFFICE OF THE

STATE OF CONNECTICUT

FROM (Name of Defendant)

David Cleary

ADDRESS OF DEFENDANT

17 Park Street, Apt. #11, New London, CT

TELEPHONE NO: 444-1823

JUDICIAL DISTRICT OR G.A. COURT

GA 10

ADDRESS OF COURT

112 Broad Street, New London, CT

CRIME(S) CHARGED AGAINST DEFENDANT

Criminal Trespass 1st Degree 53-107

APPEARANCE DATE AND TIME (Initial appearance not more than 14 days after date of arrest)

8-5-92

PROMISE TO APPEAR

I, the above-named defendant, PROMISE TO APPEAR: (1) before the Superior Court at the court location noted above on the APPEARANCE DATE and the TIME SPECIFIED above; (2) at

any other date and time to which the charge(s) against me may be transferred, and (4) at any other date and time at which a hearing on conditions of release is held.

understand that IF I FAIL TO APPEAR, in accordance with the foregoing promise, I WILL BE COMMITTING THE CRIME OF FAILURE TO APPEAR and be subject to the following:

(1) IMMEDIATE ARREST, OR ISSUANCE OF A CAPIAS

(2) ONE YEAR IN PRISON OR $1,000 FINE OR BOTH if I am charged with a MISDEMEANOR(S) MOTOR VEHICLE VIOLATION OR FIVE YEARS IN PRISON OR $5,000 FINE OR BOTH if I am charged with a FELONY(ies)

I also understand that if a bail commissioner believes that I will not appear in court as required, he may petition the court and the court may issue a capias.

APPENDIX A-2

I also promise to satisfy all the non-financial conditions of release stated below.

I also understand that IF I FAIL TO SATISFY ANY OF THESE CONDITIONS, THE COURT MAY MODIFY OR ADD ADDITIONAL CONDITIONS OR MAY REVOKE THE PROMISE TO APPEAR.

I have read/had read to me the notice on the back side of this form and I understand the notice.

CONDITIONS OF RELEASE (Court may add other conditions)

1. Do not commit a federal state or local crime.

SIGNED (Defendant)

X David Cleary

DATE SIGNED (mo., day, yr.)

2/22/92

SIGNED (Parent or Guardian if minor)

DATE SIGNED (mo., day, yr.)

APPENDIX A-3

Subscribed to before me. Defendant advised of the above penalties and furnished with a copy of this promise and the notice on the back side hereof.

SIGNED (Police Officer, Assistant Clerk, Bail. Comm.)

(Signature illegible)

DATE SIGNED

7-22-92

JOB TITLE

Ptlm.

POLICE DEPT. (if applicable)

New London

APPENDIX A-4

STATE OF CONNECTICUT

OFFICE OF THE CLERK

SUPERIOR COURT

112 Broad Street (203)443-8343

New London, Connecticut 06320

9-25-92

State of Connecticut

VS

David Cleary

CR92-206747

On 9-23-92 the above case was assigned for a court trial at 1100 a.m. The case was continued to 10-7-92 as the defendant was not sitting in the right courtroom when the case was called.

_____

(Signed) Deputy Clerk

APPENDIX B

beach and he comes up to me and he starts to give me a ration of stuff and then I went and I got the police. By the time the police go there, probably ten minutes. ---saw him walking up Ocean Avenue then.

THE COURT: -- he already left like ten or fifteen minutes later?

WITNESS: Yuh.

THE COURT: After you told him to leave? All right. Go ahead. Anything further of this witness, Mr. Cleary?

RE CROSS EXAMINATION BY PRO SE DEFENDANT:

Q Are you aware that Ocean Avenue is a right of way?

A Yuh, you drive your car on there every day.

Q --

A What are you talking about?

Q Are you aware Ocean Avenue, completely, all the way to Long Island Sound

is a right of way?

PROSECUTOR: Objection, Your Honor, facts not in evidence.

THE COURT: No, he can answer that question. Do you know whether it is or not, sir? All you have to do is answer that question yes or no.

A All I know is Ocean Avenue is paved, that's all I'm saying.

THE COURT: All right. It's a right of way. Go ahead, Mr. Cleary.

Q -- Your Honor aware that Ocean Avenue goes completely into Long Island Sound, is a complete right of way?

THE COURT: He answered that question...

DEFENDANT: Okay.

THE COURT: Just go on to the next...

Q Are you familiar with this meeting at all?

PROSECUTOR: Objection, Your Honor.

THE COURT: No, he -- ask him, that's not in evidence -- he can ask him to look at it and see if he knows anything about it.

WITNESS: -- Read it?

THE COURT: -- Read it, Mr. Michals.

WITNESS: Okay.

THE COURT: -- you know anything about the meeting that's discussed -- you can answer that question yes or no.

WITNESS: No.

THE COURT: All right. Next question, Mr. Cleary.

Q You're not familiar with...

THE COURT: he answered that.

A I'm just a worker.

Q Yuh -- just asked yuh -- do you know anything about this meeting?

A I said I'm a worker there, I don't ...

Q Yuh, but you...

THE COURT: Mr. Cleary, go on to the next question.

-- Mr. Cleary, why aren't you represented by a lawyer in this case?

DEFENDANT: Because I had the maps said -- clearly --

THE COURT: No, but there are ways to do things, sir, and you're representing yourself -- what do you do for a living sir?

DEFENDANT: I just started Monday at Dow Chemical -- I'm sand blasting. I sand blasted two hours this morning.

THE COURT: All right...

DEFENDANT: I'm ...

THE COURT: It would be like me sand blasting trying to do something like you representing yourself and -- all right, I'm going to continue the case for two weeks, Counsel, and keep the case in a status quo situation. I'm going to ask the State's Attorney to obtain a copy of the file that Mr. Cleary is referring to and

the State's Attorney than can call Mr. Cleary in and show him the file. If there is anything that the State's Attorney believes is privileged from disclosure, they should bring the matter to this court's attention at least one week before the continuation date for a hearing and notify Mr. Cleary of the date. Do you understand that ruling, Mr. Cleary?

DEFENDANT: Yes, two weeks from today?

--onto the beach?

A On the end where it butts up to Ocean Beach, there's one and there's one in the middle -- and on the far end closest to Pequot Avenue.

Q Is there some sort of door or fence --

A There's a push gate there with signs on it telling people to stay out unless they're a member.

Q There any other way to access the beach?

A Well, you walk along the high water mark, but we don't bother anyone who walks along the high water mark. I mean -- people walk down from Ocean Beach that way and come back the way on the sand. That's what they do. They walk the low water, the high water mark on the other side of the fence -- you can't put a fence there cause legally, that doesn't belong to anybody at the water.

Q Okay.

A So people there from Ocean Beach, say they're there with their family, they might walk the kids down on the mark and go back up, but they do not come across from Ocean Avenue.

Q They -- do not -- considered Neptune Beach....

A It's considered, but it's like everybody...

Q ....property?

THE COURT: One at a time.

MONITOR: -- speaking out of turn.

THE COURT: Don't interrupt each other, okay, Counsel? Go ahead.

PROSECUTOR: My fault.

on the diagram as Ocean?

A No, it was Neptune.

Q What is marked on the diagram as Ocean?

A Yeah.

Q And he was headed towards what's marked on the diagram as...

A Neptune.

Q -- Long Island Sound?

A Right.

Q All right, and then on the diagram, that's when you first saw him?

A No, he'd been there like three or four times before that.

Q No, no, no, on July 22nd?

A Oh, on that day? On that day?

Q Yes.

A Well, he came down, he's getting bold now because he's been a couple days already...

Q When you first -- I'm sorry, I'm sorry to cut you off. When you first saw him, Mr. Michals?

A Neptune Park side, he's coming down -- see, to me, that's Neptune Park -- posted and everything.

THE COURT: Just listen to the question, Mr. Michals.

WITNESS: Okay.

THE COURT: Start again, Mr. Carney.

Q On the diagram, when did you first see the defendant on July 22nd?

MR. CLEARY: It's basically the same thing, but, we are down to June 23rd.

MR. CARNEY: Same objection, Your Honor.

THE COURT: Sustained.

MR. CLEARY: Your Honor, I would like to enter this.

THE COURT: He objected, Mr. Cleary. Why don't you briefly describe the document. It is just another letter between the two officers.

MR. CLEARY: But, this is from -- this is to Captain Dittman from the engineer this time. And this is when I first got a phone call from ---

THE COURT: Does it relate to the sidewalk, sir, or the beach?

MR. CLEARY: ----Sidewalk.

THE COURT: It's irrelevant even if it did meet any exception to the hearsay

rule. so, I'll sustain the objection. The State is not claiming you trespassed on a sidewalk. They are claiming you trespassed on the beach.

MR. CLEARY: And I showed you the document where the beach goes right into Long Island Sound.

BY MR. CLEARY:

Q This is my next--is that a memo from the day before you arrested me?

A It's a memo.

Q Is this dated the 21st of July?

CITY OF NEW LONDON CONNECTICUT

INTERDEPARTMENTAL MEMORANDUM

DATE: June 23, 1992

TO: William Dittman, Captain,
N.L. Police Department

FROM: James R. McDermott, P.E.,
City Engineer

This is to affirm the concurrence of this office with your findings of the location of the subject:

That the east street line of Ocean Avenue in the vicinity of Mott Avenue lies east of the parallel to the sidewalk along the east side of Ocean Avenue and either through or in the close proximity to the large monument on the southeast corner of the intersection of Ocean and Mott Avenues. Said street line terminates at the high water line of Long Island Sound.

JRM/g

CC: Director of Law

APPENDIX D-2

Mr. Cleary.

MR. CLEARY: Well, no, I think the ---

THE COURT: Not by these documents, sir.

MR. CLEARY: ---Well, if you---

THE COURT: Any objection, Mr. Carney?

MR. CARNEY: Yes, Your Honor, this is a memo between Captain Dittman and Sergeant Lacey. Neither of whom are here to testify as to the contents of the document. I also would question the relevancy of the document as it appears to relate to the ownership of the sidewalk which the State is making no claim that that is where the trespass took place.

THE COURT: Yes, I understand that. All right. Mr. Cleary, I take your point that there is a question about the

sidewalk, But, this is hearsay and doesn't come in.

MR. CLEARY: But, also, the area, you said the street area. You have, I think this was Exhibit 4. There is sixty feet of right of way there.

THE COURT: Continue with your questions, sir.

MR. CLEARY: Okay.

BY MR. CLEARY:

Q I'm going to go--The next one I have is June 23rd which is--I guess I have to ask you have you seen June 23rd? We are getting closer to my arrest date now. Or did you know anything about it or discuss anything with the police while you were employed there?

A No, I did not.

chief that I was inappropriately arrested. And the sign that was down--Do you remember that there was a sign on the ---

THE COURT: Well, wait a minute, Mr. Cleary. Are you saying that that applies to this arrest on July 21st or some prior arrest?

MR. CLEARY: Right.

THE COURT: Which? Previous arrest?

MR. CLEARY: The previous arrest.

THE COURT: Then it is irrelevant, sir.

MR. CLEARY: That they admitted that they made an inappropriate---

THE COURT: That's irrelevant, sir.

MR. CLEARY: --I can't put this into evidence?

THE COURT: No, and you should be either retaining a lawyer to represent you in this case and not trying to represent yourself

or if you were going to represent yourself you should have studied the rules of evidence, so, you would know how to get some evidence in. Like subpoenaing the chief and asking if he said it.

BY MR. CLEARY:

Q Did anyone in the police department tell you that they made an inappropriate arrest of me?

A No.

NEW LONDON POLICE DEPARTMENT

ADMINISTRATIVE MEMO

TO: C. F. Driscoll, City Manager

FROM: Chief R. A. Kistner

RE: Neptune Park Disagreement

DATE: 07/22/92

Sir:

Consider this memo in the "heads-up" category.

Please look at the attached copy of a photo which depicts the gate area to Neptune Park. It is fenced off and marked as private property with a warning that trespasser's will be prosecuted.

In March, Mr. David Cleary was on the sidewalk beyond the fence line, i.e., in the "private property" area. A complaint was made and he was arrested for trespassing. He claimed that the area was in fact, the property of the City of New London and

therefore a public access. The charges against him were dismissed in court. He came in and provided documentation to support his claim.

We did our own survey and submitted same to the City Engineer, Jim McDermott for confirmation. He affirms our finding which supports Mr. Cleary's claim. The actual street line terminates at the high water mark of Long Island Sound. The City boundary runs through the large stone pillar which is visible in the photo. Thus, the sidewalk is City Property and Neptune Park Association has been illegally, or at least improperly posting it. This led to an inappropriate arrest of Mr. Cleary.

We are submitting our results to the Building Inspector's Office with a request for appropriate action. The actual street line terminates at the high water mark of Long Island Sound. Please let us know if

you are aware of any agreements deeding this land to Neptune Park. We couldn't find any.

cc: City Attorney's Office

APPENDIX D-5c

and up on the property. But, I did not see him on the property.

THE COURT: I understand that. I understand that. It was way past the mere stone marker. All right, go ahead Mr. Cleary.

MR. CLEARY: I think I only really have one more question here.

BY MR. CLEARY:

Q Have you seen that before?

A I have not read it, but, I've heard from it before. That's to the ship commanders not to patrol officers.

Q This is by August 5th had you finally been told not to make arrests for trespassing along the subject sidewalk? Have you now been told?

A The sidewalk, yes.

Q By August 5th---

A By August 5th.

Q ---That's the first time--is that the first time that you had been told don't make an arrest on that area?

A I can't tell you off-hand. I might---

Q It's right around that time, I guess?

A ---Probably, yes.

MR. CLEARY: I finished with the officer. I would like to put this in as an ---

THE COURT: Show that to Mr. Carney, Sir.

(MR. CARNEY REVIEWS THE DOCUMENT)

MR. CARNEY: No, Your Honor.

THE COURT: All right, Defendant's Exhibit 9.

NOTICE OF RIGHT TO APPEAL

JUDGMENT OF CONVICTION

JD-CR-19 REV. 12-86

Pr. Bk. 945, 959, 4012, 4016 4040

Gen. Stat 52-259

STATE OF CONNECTICUT

JUDICIAL DEPARTMENT

INSTRUCTIONS

1. Prepare in duplicate.
2. Give a copy of this notice immediately after imposition of sentence to every defendant who has been convicted after a trial or upon an adverse decision in habeas corpus proceedings. (It is not necessary to give this notice to anyone who has pleaded guilty).
3. Staple the signed original to the case file.

TO (Name of defendant)

David Cleary

DATE OF JUDGMENT OF CONVICTION

10-21-92

DOCKET NO.

CR 206747

FROM (Name and address of court)

Superior Court GA #10

112 Broad Street, New London, CT

---

1. You have the right to appeal the judgment of conviction entered this day. If you desire to appeal, your appeal must be filed in accordance with Practice Book Sec. 4012 (See the back of this notice) WITHIN TWENTY DAYS FROM THE DATE OF THE JUDGEMENT OF YOUR CONVICTION, unless within that twenty day period, you file with the clerk a motion for extension of time to appeal (See Practice Book Sec. 4040 on the back of this notice) or an application for a waiver of fees (see paragraph 4 below).

2. If you give the court oral or

written notice of your intention to appeal before execution of the judgment or payment of the fine, the judge may admit you to bail. If only a fine was imposed and you wish to appeal, do not pay the fine or you will lose your right to appeal.

3. You must pay the following fees and costs with your appeal. If you are appealing to the appellate court, you must pay a record fee of $25.00 and an entry fee of $100.00. If you are appealing to the supreme court, you must pay a record fee of $75.00 and an entry fee of $100.00. You must also give security for costs, which may be in cash paid to the clerk or a bond with surety, as follows: $150 for appeals to the appellate court; $500 for appeals to the supreme court.

4. (a). If you desire to appeal and either cannot pay the required fees or afford to obtain a lawyer, you have a right

to ask the court (in which you were convicted) to 1) allow you to appeal without payment of costs and expenses and 2) appoint a lawyer for you. Your request must be under oath and state the grounds upon which you propose to appeal and the facts concerning your financial status. the clerk of the court (in which you were convicted) will furnish you, upon your request, the application forms for the appointment of a lawyer and for a waiver of court fees. THE APPLICATION FORMS MUST BE FILED WITHIN TWENTY DAYS FROM THE DATE OF JUDGMENT OF CONVICTION OR YOU WILL LOSE YOUR RIGHT TO APPEAL.

(b). If you request the relief referred to in paragraph 4 (a), you will be notified of the court's decision on your request. Your appeal, itself, must then be filed within twenty (20) days from the date of the court's decision on such request.

Therefore, if your request is denied, you or a lawyer acting for you must file your appeal and pay the expenses listed in paragraph 2 within that twenty (20) day period.

SIGNED (Clerk of Court)

Jan Swain, Deputy Clerk

I have received a copy of this notice on:

October 21, 1992

SIGNED (Defendant)

David A. Cleary

11/10/92 for filing of appeal

NOTICE OF APPEAL TRANSCRIPT ORDER

No. A 17370

NAME OF CASE

Connecticut Vs. David A. Cleary

DOCKET NO. CK 92206747

K 10KCR9202067175

HEARING DATE(S)

Oct 7, 1992 Oct 21, 1992

TRIAL COURT LOCATION

GA 10

JUDICIAL DISTRICT OF

N. L.

JUDGE'S NAME(S)

Teller

CASE TYPE ("X" One)

Criminal

CASE TRIED TO ("X One)

Court

APPEAL TO ("X" One)

Appellate Court

APPEAL ("x" One)

APPENDIX E-1

2. From CRIMINAL judgment where DEFENDANT is: (b) not incarcerated

4. Involving the PUBLIC INTEREST

PROVIDE A DETAILED STATEMENT DESCRIBING THE PARTS OF THE PROCEEDINGS OF WHICH A TRANSCRIPT IS ORDERED

Entire Hearing

FROM

NAME AND MAILING ADDRESS OF PERSON ORDERING TRANSCRIPT

David a. Cleary, 17 Park Street, New London, CT 06320

RELATIONSHIP (Atty. for Ptlf., Deft, etc.)

Pro Se

SIGNATURE OF PERSON ORDERING TRANSCRIPT

David A. Cleary

DATE SIGNED

November 3, 1992

TOTAL ESTIMATED NO. OF PAGES 110

FINAL ESTIMATED DELIVERY DATE 12/21/92

APPENDIX E-2

NAME OF OFFICIAL COURT REPORTER

Mara D. Santora

SIGNATURE OF OFFICIAL COURT REPORTER

DATE SIGNED 11/16/92

ACTUAL NUMBER OF PAGES IN ENTIRE APPEAL TRANSCRIPT: 90

DATE OF FINAL DELIVERY PURSUANT TO Pr. Bk. 4019 (c) 12/29/92

THIS CERTIFICATE IS FILED PURSUANT TO Pr. Bk. 4019

SIGNATURE OF OFFICIAL COURT REPORTER

Mara D. Santora

DATE SIGNED

12/29/92

STANDBY CASE

THURSDAY, JAN. 7, 1993

(10) AC11869

STATE OF CONNECTICUT

Stephen Carney, Deputy Assistant State's Attorney

v.

DAVID CLEARY

David Cleary, pro se

Defendant-appellant's preliminary statement of issues, designating of contents of record and docketing statement due on or before November 6, 1992.

APPENDIX F

Docket No. CR 92 020 674 78

CR 10 206 747

K 10K CR 9292067475

A.C. 11869

State of Connecticut — Appellate Court

Vs. — Hartford, CT

David Cleary — December 1, 1992

DEFENDANTS REQUEST FOR DISCLOSURE

I David Cleary 50 of Park Street New London request, pursuant to sections 216 ET SEC of the practice book, the original New London Police Department incident report. Not the Bruce Cloutier, new president of the Neptune Beach Association, incident report but the one at the time of my arrest.

Summons #72009

Incident #92 204052 David Cleary

/s/David Cleary

APPENDIX G

OFFICIAL COURT REPORTER/MONITOR'S AMENDED WRITTEN TRANSCRIPT ORDER ACKNOWLEDGMENT

NO. A 17370

NAME OF CASE

State of Connecticut vs. David Cleary

TRIAL COURT DOCKET NO.

CR10-206747

REVISED ESTIMATED DELIVERY DATE

12/29/92

ORIGINAL ESTIMATED DELIVERY DATE

12/21/92

NAME OF PERSON ORDERING TRANSCRIPT

David Cleary

RELATIONSHIP (Atty. for Pltf., Deft. etc.)

Defendant

REASON FOR REVISION OF ESTIMATED DELIVERY DATE

Requesting extension due to extension granted on appeal number 22662.

NAME OF COURT REPORTER/MONITOR

Donna M. Bailey

APPENDIX H-1

SIGNATURE OF COURT REPORTER/MONITOR

/s/ Donna M. Bailey

DATE SIGNED 12/21/92

SIGNATURE OF OFFICIAL COURT REPORTER

Signature illegible

P 343 113 926

Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to APPELLATE COURT	
Street and No. 231 CAPITAL AVE	
P.O. State and ZIP Code HARTFORD CT 06106	
Postage	$ 1.44
Certified Fee	1.00
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.00
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$3.44
Postmark or Date	CT 06106 SEP 13 1991

PS Form 3800, June 1991

P 343 113 927

Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to APPELLATE COURT	
Street and No. 231 CAPITAL AVE	
P.O. State and ZIP Code HARTFORD CT 06106	
Postage	$ 1.44
Certified Fee	1.00
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.00
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$3.44
Postmark or Date	HARTFORD CT 06106 SEP 13 1991

PS Form 3800, June 1991

OFFICIAL RECEIPT
CO-99 REV. 5/80
(Stock No. 6938-118-01)

S 38881

STATE OF CONNECTICUT

RECEIVED FROM	DATE OF RECEIPT
DAVID CLEARY	1/21/83
FOR	THE SUM OF
Sheriff's Fee	☑ Cash ☐ Check $ 88 00
AGENCY NAME	RECEIVED BY
N. C. County Sheriffs	L. Overton

APPENDIX J

STATE OF CONNECTICUT

APPELLATE COURT

A.C. 11869

STATE OF CONNECTICUT

V

DAVID CLEARY :January 22, 1992

NOTICE OF DISMISSAL

IT APPEARING THAT THE ORDER OF THE COURT DATED JANUARY 7, 1993, ORDERING THE DISMISSAL OF THE ABOVE-CAPTIONED APPEAL UNLESS THE DEFENDANT FILED THE PRELIMINARY STATEMENT OF ISSUES, DESIGNATION OF CONTENTS OF RECORD AND DOCKETING STATEMENT ON OR BEFORE JANUARY 21, 1992, HAS NOT BEEN COMPLIED WITH AS OF THIS DATE, IT IS HEREBY ORDERED THAT THE APPEAL BE AND HEREBY IS DISMISSED.

BY THE COURT,

/s/Cynthia M. Gworek

CYNTHIA M. GWOREK

ASSISTANT CLERK-APPELLATE

APPENDIX K-1

Notice to: 1/22/93

Clerk, Superior Court, New London at GA 10, 206747

Hon. Samuel H. Teller	No record prepared
Office of the Chief State's Attorney	No record prepared
David Cleary, pro se	No exhibits received

APPENDIX K-2

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

APPELLATE COURT
231 CAPITAL AVE
HARTFORD CT 06106

4a. Article Number

P 343 113 927

4b. Service Type

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

JAN 26

5. Signature (Addressee)

6. Signature (Agent)

Mark B. Dudley

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991 ☆U.S. GPO: 1992—323-402 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

APPELLATE COURT
231 CAPITAL AVE
HARTFORD CT 06106

4a. Article Number

P 343 113 926

4b. Service Type

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

JAN 26

5. Signature (Addressee)

6. Signature (Agent)

Mark B. Dudley

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991 ☆U.S. GPO: 1992—323-402 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

BEST AVAILABLE COPY

SUPREME COURT

STATE OF CONNECTICUT

Docket No. A.C. 1189	Supreme Court
State of Connecticut	231 Capital Ave.
-VS-	Hartford CT 06106
David A. Cleary	February 5, 1993

CERTIFICATION BY SUPREME COURT

CT. P.B. Annotated - Rules of Appellate Procedure--1993 Edition

The authors opinion is that the 20 day deadline filing is met if the petition is filed in the trial court on the twentieth day, even if the endorsed original is not filed with the appellate clerk until the next day or so. this is the implication of the first sentence of section 4131 (A).

1. I maintain that my appeal was in P. O. Box on deadline (Receipt enclosed)
2. Prosecutor Carney was handed the appeal on deadline by me in Norwich Court House.

APPENDIX M-1

3. No original Incident Report.

4. No age of victim complainant on 1:30 P.M. Incident Report.

5. Victim Complainant not President of Neptune Park.

6. Victim Complainant admits crime but not arrested.

7. Officers ignorant of boundaries.

8. Witness lied throughout questioning.

9. Judge answered the question for witness: was he guarding a public Right of Way?

10. I did not find about P.B. section 4129 - first sentence (A) until February 3, 1993.

My witnesses are Allen Gannuscia, Michelle Angers, and Cynthia Gworek; Every conversation with these people involved in some part with clerks not stamping paper work at New London Court House. Therefore, the Postal Receipts enclosed should be

considered the same as a GA 10 Clerk Stamp.

David A. Cleary

/s/ David A. Cleary

17 Park Street

New London, CT 06320

APPENDIX M-3

SUPREME COURT

STATE OF CONNECTICUT

NO. PSCS-92-0426

State of Connecticut

v.

David A. Cleary

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (AC 11869), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/ Alan M. Gannuscia

ASSISTANT CLERK-APPELLATE

Dated: March 11, 1992

Notice sent: 3/11/93

Clerk, Superior Court, New London

at G.A. 10, CR92206747

Clerk, Appellate Court

APPENDIX N-1

David A. Cleary, pro se

Office of the Chief State's Attorney -

Appellate Unit

David A. Cleary, pro se, in support of petition.

dcm

APPENDIX N-2

DAVID A CLEARY
17 PARK ST
NEW LONDON CT 06320

NEW HAVEN CT 060 PM 1993

ALWAYS USA
USE ZIP CODE
29

U.S. DISTRICT COURT
DISTRICT of CT
OFFICE OF THE CLERK
US COURT HOUSE
450 MAIN ST.
HARTFORD CT 06103

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

OFFICE OF THE CLERK

UNITED STATES COURTHOUSE

450 MAIN STREET

HARTFORD, CT 06103

Tel. No. 203-240-3200

KEVIN F. ROWE
CLERK

DENNIS P. IAVARONE
DEPUTY-IN-CHARGE

March 24, 1993

David A. Cleary

17 Park Street

New London, CT 06320

Dear Mr. Cleary:

Please find enclosed your papers and your check for $120.00 Upon review of your papers, please be advised that you should file your papers with the United States Supreme Court directly. I have enclosed a sheet which includes the address and the

clerk's name at the United States Supreme Court. In reference to your question concerning filing fees and procedures, you may contact the clerk at the Supreme Court and he should be able to direct you.

Sincerely,

/s/ Soo K. Kim

Soo K. Kim

Pro Se Law Clerk

Amendment VI

Rights of Persons Accused of Crime

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.